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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,206	10/03/2003	Keith Colacioppo	9049	2120

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EXAMINER

DOAN, ROBYN KJEU

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/678,206

Applicant(s)

COLACIOPPO ET AL.

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

In claims 1-3, there exist an inconsistency in the claims thus making this scope unclear. Claims 1, 2 and 3 recite a hair treatment applicator for applying a hair treatment to hair in the preamble of the claims, however, the body of the claims positively recites the hair treatment as a part of the invention. As such, it is unclear whether applicant intended the claims to be directed to the subcombination, the hair treatment applicator, or the combination, the hair treatment applicator with the hair treatment. Applicant is hereby required to indicate whether the claims are intended to be drawn to the hair treatment applicator or the hair treatment applicator in combination with the hair treatment and amend the claims to make the language thereof consistent with this intent. For examination purposes, the claims will be considered as drawn to the subcombination of the hair treatment applicator.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kiefer et al (U.S. Pat. # 4,427,001).

With regard to claim 1, Kiefer et al discloses a facial massage device (fig. 2) comprising a handle (12) having a longitudinal axis, a plurality of retaining structures (24) connected to the handle, wherein each of the plurality of the retaining structures being separated from each other by a separation volume (space between two retaining structures 24), each of the retaining structures being substantially parallel to each other and being substantially perpendicular to the longitudinal axis of the handle (fig. 2), wherein the plurality of retaining structures holding oil or cream such that the oil or cream is inherently capable not to enter the separation volume. In regard to "a hair treatment applicator for applying a hair treatment to hair", the above apparatus has shown the claimed structures, recitation with respect to manner in which claimed apparatus is intended to be employed does not differentiate claimed apparatus from prior art apparatus satisfying structural limitations of that claimed. Ex parte Masham 2USPQ2d 1647 (1987).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Norton (U.S. Pat. # 1,161,719).

With regard to claim 2, Norton discloses a massage device (figs. 1-2) comprising a plurality of heads (5), a retaining structure (8) being connected to each of the plurality of heads, wherein each of the plurality of heads being separated from each other by a separation volume (space between the two heads 5), Norton further discloses an elongated member (3) with a longitudinal axis connecting to the plurality of heads; it is noted that to call member (3) a handle is a matter of terminology because there is no further structure being described for the handle. The retaining structure being substantially parallel to each other and also being substantially perpendicular to the longitudinal axis of the handle (3), and wherein the retaining structures hold tonic such that the tonic is inherently capable not to enter the separation volume. In regard to claim 3, Norton shows a first head (5) forming a retaining volume (7) and having a plurality of first tines (8) which are disposed in a substantially square pattern (fig. 1), a second head (5, fig. 1) forming a second retaining volume (7) and also having a plurality of second tines (8) which are disposed in a substantially square pattern. Norton also discloses an elongated member (3) with a longitudinal axis connected to the first and second heads; it is noted that to call member (3) a handle is a matter of terminology because there is no further structure being described for the handle. The plurality of first and second tines being substantially parallel to each other (fig. 1) and being substantially perpendicular to the longitudinal axis of the handle. Norton also shows a separation volume (space between first and second heads), wherein the first and second retaining volumes being separated by the separation volume, and wherein the first and second retaining volumes hold tonic such that the tonic is inherently capable not to enter the

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separation volume. In regard to "a hair treatment applicator for applying a hair treatment to hair", the above apparatus has shown the claimed structures, recitation with respect to manner in which claimed apparatus is intended to be employed does not differentiate claimed apparatus from prior art apparatus satisfying structural limitations of that claimed. Ex parte Masham 2USPQ2d 1647 (1987).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Noble, Huang and Pearson are cited to show the state of the art with respect to a massage device having a plurality of heads and a handle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Robyn", with a long horizontal flourish extending to the right.

Robyn Doan  
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